***United States Court of Appeals***

***for the***

***District of Columbia Circuit***

# TRANSCRIPT OF RECORD

414

UNITED STATES

COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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| In the Matter of | ) | |
| | ) | No. 23,199 |
| NEWTON MILBY ELLIS | ) | |



Brief for Appellant

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December 12, 1969

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## REFERENCES AND RULINGS

1. The Juvenile Court's special findings of fact and conclusions of law are set forth in the Statement of the Case, supra.

2. The opinion of the D.C. Court of Appeals below is reported at 253 A.2d 789 (1969).

3. This Court granted appellant's motion for leave to proceed in forma pauperis on June 25, 1969.

4. This Court consolidated appellant's appeal with those of James Edward Coward (No. 23,274) and Rufus Johnson (No. 23,276) on October 3, 1969.

5. This Court granted appellant's petition for allowance of an appeal on October 6, 1969.

6. This case has not been before this Court at any prior stages of litigation.

## STATEMENT OF ISSUES

1. Whether when a youth is charged with a law violation in D.C. Juvenile Court, "beyond a reasonable doubt" is not the appropriate standard of proof as a matter of due process, equal protection, and applicable D.C. law.

2. Whether a verdict in a multi-count Juvenile Court case is legally adequate, given applicable law on aiding or abetting, when its conclusion is that the youth has "committed the offense" solely because he was "with" the actual law violators.

## STATEMENT OF CASE

Newton Milby Ellis is a fifteen-year old boy who lives with his grandparents and attends Lincoln Junior High School in the District. On January 9, 1967, a petition was issued representing that on November 19, 1966, Newton had violated two provisions of the D.C. criminal code, 18 D.C. Code § 1801 and § 2202, representations which if true would bring him within the jurisdiction of the Juvenile Court.[1/] After three continuances, the case finally came to trial in Juvenile Court on November 18, 1967, jury trial having been waived. After trial, the Court found Newton within its jurisdiction. (See infra). Observing that Newton until then had an unblemished record, the Court placed him on indefinite probation in his grandfather's custody.

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1/ "Jurisdiction" is here used in the special sense of 11 D.C. Code § 1551(a)(1)(A) (1967 ed.), meaning the Court's immediate authority to subject the boy to remedial measures. From the inception of the proceedings the Juvenile Court unquestionably had "jurisdiction" over person and subject matter in the common judicial sense.

(Tr. 43). Newton appealed to the D.C. Court of Appeals, which on May 23, 1969, affirmed the verdict of the Juvenile Court. Its opinion is reported at 253 A.2d 789 (1969). This Court granted Newton's petition for allowance of appeal.

The parties stipulated that on the night in question Irving's Men's Store at 3112 14th Street, Northwest, had been burglarized, and a bathrobe (later retrieved by the police) removed from the store's front window (Tr. 15). The only witness for the Government at trial was D.C. Det. John Oliva. He testified that on the night of November 19, 1966, cruising south on 14th Street towards Irving Street, he heard the sound of glass breaking and saw three youths run south on 14th, then turn right onto Irving; cross-examination later made clear what was here apparent, that Det. Oliva had not witnessed anyone, including Newton, in the act of either breaking the window or lifting items from the front window display. The officer then said that he called on the boys to halt, and that one of the boys, the one running behind the others, who was identified at trial as Newton Ellis, dropped the bathrobe he had been carrying and came to a stop, where he was apprehended. (Tr. 17-18). Corporation Counsel here asked Det. Oliva whether Newton discussed the burglary with the police, and the following colloquy ensued:

A. Yes, we brought him into the station and talked with him.

Q. Did he admit?

A. No, we just talked to him (Tr. 19).

On cross-examination Det. Oliva indicated that Newton did give the police the names of the other boys (Tr. 22). On re-direct the witness suggested -- in flat opposition to his earlier

testimony set out just above -- that Newton had admitted that although he had not participated in the breaking, he "was there" when the breaking occurred and had reached inside the window to grab the robe. (Tr. 24).

The defense's first witness was Newton's "Big Brother," Mr. Curtis White, who is Director of Training and Safety at Sheraton Park Hotel, and who as a character witness proceeded to testify that Newton's reputation among his teachers at school was almost uniformly "good." (Tr. 26-27). Newton then took the stand himself and told the court that late on November 19th he, a girl, and another couple were walking down 14th Street on their way back from a dance at Saint Stephen's Church when they ran into Earl Patterson, a friend of Newton's from school. Newton and Earl headed south on 14th. As they approached Irving's Men's Store they stopped as they suddenly noticed two other boys -- one of whom Newton recognized as Earl Smith, another schoolmate -- standing in the indented entrance of the Store in the process of breaking its front window with a bottle (Tr. 30-31). Thinking that the best way to avoid trouble in these circumstances was to get away from the premises (Tr. 38), Newton backtracked a few steps and then went into an alley just north of Irving's. Two police officers then entered the alley from its other opening near the Bell Vocational School and placed Newton under arrest (Tr. 31-32). Newton then specifically testified that at the station he did not confess that he had taken the bathrobe or anything else (Tr. 32-33), although he complied with the police's request that he furnish them with the names of the other boys.

Here the defense rested. In the middle of his summation Corporation Counsel articulated the following argument:

> It does not seem to me that he [Newton] is not involved. Perhaps one cannot expect him to act rationally all the time, but he did not seem to do anything to prevent the breaking. He saw the breaking. He did not tell them to stop or anything. (Tr. 89).

In his closing remarks (Tr. 40) counsel for the defense raised again a point he noted earlier (Tr. 15),[2/] that in delinquency proceedings the measure of proof in fact-finding should be "beyond a reasonable doubt," not "preponderance of the evidence." Summations ended, the Court delivered its findings, which are reproduced in full below:

> All right, Newton, the Court has listened to the evidence that has been adduced in this case. The Court notes that Officer Oliva in this case testified you were with three boys and you were the last boy that happened to catch up in this group of boys. He saw this object, which turned out later to be the bathrobe, fall to the walk.
>
> The Court notes that the officer did state he apprehended you carrying a bag which contained the bathrobe and definitely saw you drop this bathrobe.
>
> The Court notes you denied having the bathrobe. The Court notes you denied that you knew of or were with the two boys who broke the window at Irving's Men Shop. However, the Court prefers to believe the witnesses for the Government, that of Officer Oliva, which he stated he definitely placed you with two other boys running. The Court feels you being with the boys who did the actual breaking of the window, that you are just as guilty as they are and accordingly, the Court does find that you committed the offense. The Court, therefore, finds you are within the jurisdiction of this Court. (Tr. 42-43)

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2/ The transcript version of counsel's comments at this point seems badly garbled. What he undoubtedly said was the following: "I am aware that in the Wylie case [231 A.2d 81 (D.C.C.A. 1967)] the District Court of Appeals ruled otherwise, and although I think that ruling was dictum, it was considered dictum." (Tr. 15).

The docket entry (Tr. 46) makes clear that the standard of proof which the court applied in rendering these findings was simple "preponderance."

## SUMMARY OF ARGUMENT

1. In Juvenile Court delinquency proceedings, "beyond a reasonable doubt" is the appropriate standard of proof as a matter of due process, equal protection, and indeed D.C. law itself. See In Re Gault, 387 U.S. 1 (1969). "Beyond a reasonable doubt" clearly lacks any element of incompatibility with any of the special features of juvenile court procedure.

2. The Juvenile Court explicitly and expressly found that Newton "committed the offense" (he had been charged with housebreaking and petit larceny) just because he had been "with" the actual agents of the crime. Such a factual predicate wholly failed to establish Newton's culpability either as a principal or as an aider and abettor, see Hunt v. United States, 115 U.S. App. D.C. 1, 316 F.2d 652 (1963), and Nye & Nissen v. United States, 336 U.S. 613 (1949), and this substantial deficiency was compounded by the Court's failure to identify exactly which of the crimes charged Newton had committed. See People v. Sykes, 22 N.Y. 2d 159, 292 N.Y.S. 2d 76, 239 N.E. 2d 182 (1968).

## ARGUMENT

### I. A JUVENILE CAN BE BROUGHT WITHIN THE JUVENILE COURT'S JURISDICTION AS A LAW VIOLATOR ONLY BY EVIDENCE ESTABLISHING CULPABILITY "BEYOND A REASONABLE DOUBT."

Appellant's basic argument on this point is set forth in the brief filed by Rufus Johnson (No. 23,276), another juvenile similarly situated with whose case appellant's own has been consolidated. A formal motion to permit incorporation by reference accompanies appellant's brief. The Johnson brief will be hereinafter referred to as "The Joint Brief." Appellant here wishes merely to emphasize a few short points.

1. Strictly constitutional considerations apart, appellant argues that the D.C. Court of Appeals simply misstated D.C. law in its opinion below. There being no statute or administrative ruling defining the standard of proof in D.C. Juvenile Court, compare In Re M., 75 Cal. Rptr. 1, 450 P.2d 296 (1969), it is a judicial responsibility to define that standard; and this Court is the highest regular organ of the D.C. judiciary. It is probably not even necessary to refer to this Court's "supervisory" jurisdiction over the Juvenile Court. What is involved here is simply a quite unexceptional illustration of a higher court

reviewing a lower court; this Court has the same authority to pass on the burden of proof in Juvenile Court as it does, say, to pass on rules of evidence for District Court or the Court of General Sessions. Alternatively, this Court may see the burden of proof issue as one impliedly arising under the Juvenile Court statute, particularly 11 D.C. Code § 1551(a)(1)(A) (1967 ed.), although that statute has nothing to say on the matter expressly. If so, the Court's ultimate authority, within the D.C. judicial system, to decide the legal question remains undiminished. It can be added that it is quite conceivable that with respect to Juvenile Court issues this Court might want to defer to the judgment of the Juvenile Court, in light of the latter's immediate and full-time experience with the administration of juvenile court justice. See Creek v. Stone, 126 U.S. App. D.C. 327, 379 F.2d 106, 111 (1967). But the ruling setting "preponderance" as the standard of proof comes, of course, from the D.C. Court of Appeals, not from Juvenile Court. Indeed, the views of the Juvenile Court judges, as set forth in the Joint Brief, if anything support the position taken on the burden of proof issue by appellant here.

In looking at the standard of proof question as a matter of D.C. law, all the local factors elaborated on in the Joint Brief assume special importance in underlining the advisability of "beyond a reasonable doubt." Nor do the due process and equal protection arguments drop from view. For this Court could well conclude that one reason for declaring "beyond a reasonable doubt" to be D.C. law is the policy of avoiding the obviously serious constitutional questions which a contrary ruling would provoke.

More generally, constitutional values of procedural fairness and equality pervade our judicial system and can rightly be found relevant to the solution of legal problems even when such problems extend beyond the precise limits of the due process and equal protection clauses. Cf. Schneiderman v. United States, 320 U.S. 118, 120 (1943) and Edwards v. Habib, 397 F.2d 687, 690 n.6 (1968), cert. denied, 393 U.S. 1016 (1969), on the relevance of constitutional values in statutory construction.

2. On the strictly constitutional question, there is strong judicial, legislative, and other authority supporting the "beyond a reasonable doubt" position, as the Joint Brief indicates. The two leading authorities to the contrary are In Re M., supra, and W. v. Family Court, 24 N.Y. 2d 196, 299 N.Y.S. 2d 414, 247 N.E. 2d 253 (1969). In Re M. relies on two factors, one of which renders the case distinguishable, and the other of which is almost clearly wrong. The former is the extremely strict standards which limit California courts in passing on the constitutionality of state statutes. The latter is the Court's suggestion that "beyond a reasonable doubt" would somehow work against the speedy disposition of juvenile cases, individualized rehabilitation, and the non-criminal atmosphere of the Juvenile Court; however, it seems virtually impossible to figure out why, assuming adoption of "beyond a reasonable doubt," any of these effects need, could, or should follow. As for W. v. Family Court, supra, appellant asks only that this Court compare the majority and dissenting opinions (the latter by Fuld, C.J., joined by Burke and Keating, JJ.) for the strength of their logic and for the fidelity they manifest to the general principles set out in In Re Gault, 387 U.S. 1 (1967).

The Supreme Court has noted jurisdiction in this case (No. 778).

3. Assuming that beyond a reasonable doubt is a due process requirement in adult criminal cases,[1/] a proposition documented in the Joint Brief, that Gault requires its application in Juvenile Court does not really seem very difficult. It would be difficult if but only if such application would run against any of the special aspects of Juvenile Court procedure. See Gault, supra, at 72 (Harlan, J., concurring). But the unique and undeniable quality of burden of proof is that it has no relevance to or impact on Juvenile Court procedures -- trial, pre-trial, or post-trial -- at all. It should be mentioned that occasionally it has been said that "beyond a reasonable doubt" might deny certain "needy" juveniles the "benefit" of juvenile court rehabilitative services. That suggestion is more than met by Gault's justified skepticism concerning that "benefit," Gault's insistence on the juvenile's counterbalancing right to due process, and the argument set forth in the Joint Brief on the wisdom of concentrating the Juvenile Court's scarce rehabilitative resources on those youths who beyond a reasonable doubt are in need thereof. See also Paulsen, Juvenile Courts and the Legacy of '67, 43 Ind. L. J. 526, 550-52 (1967).

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1/ The equal protection argument, of course, would still be present even if "beyond a reasonable doubt" is not itself a constitutional right. See, e.g., Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956). The question would be whether the difference in burden of proof afforded juveniles and adults finds sufficient justification in terms of the special needs or purposes of juvenile court justice. Equal protection principles fully apply in the District of Columbia by virtue of the due process clause of the Fifth Amendment. Washington v. Legrant, 394 U.S. 618 (1969) (by necessary implication.)

II. THAT A YOUTH IS "WITH" OTHER BOYS WHILE THOSE BOYS COMMIT HOUSEBREAKING AND PETIT LARCENY AND WHILE THEY ESCAPE DOES NOT NECESSARILY SIGNIFY THAT THE YOUTH HIMSELF IS GUILTY OF "THE OFFENSE."

Under 11 D.C. Code § 1551(a)(1)(A), the Juvenile Court has "jurisdiction" over a boy, and hence authority to commit him to an institution or submit him to its other rehabilitative services, if it finds that the boy "has violated a law, or has violated an ordinance or regulation of the District of Columbia." In the present case the Juvenile Court's petition accused Newton of having violated two criminal statutes: 22 D.C. Code § 1801 (1967 ed.)[2/] titled "Housebreaking," and §2202,[3/] "Petit Larceny." In the Court below, appellants advanced an argument relating to § 1551(a)(1)(A), but it proved to be an argument which the Court unfortunately misunderstood. As his brief below will show, appellant has not contended that the evidence at trial could not permit a verdict against him on either the housebreaking or petit

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2/ "Whoever shall, either in the night or in the day-time, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, ship, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal, boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense shall be imprisoned for not more than fifteen years." The statute has subsequently been amended.

3/ "Whoever shall feloniously take and carry away any property of value of less than $100, including things savoring of the realty, shall be fined not more than $200 or be imprisoned for not more than one year, or both."

larceny charge.[4] His argument, rather, builds on the fact that whatever findings the evidence may have permitted, at the close of trial the trial judge announced what amounted to his findings of fact and conclusions of law. Appellant's position is that these special findings of fact on which the court purported to base its verdict do not support that verdict, and that the Court's conclusions of law are unsound as a matter of law.[5] In particular, appellant challenges the passage in which the Court expresses its basic reasoning and ultimate finding: "The Court feels you being with the boys who did the actual breaking of the window, that you are just as guilty as they are and accordingly, the Court does find that you committed the offense."

The problems in this case can best be examined against the backdrop of earlier Juvenile Court verdict practice. Until relatively recently, Juvenile Court juries or trial courts returned a verdict of "involved" or "not involved." The reason

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4/ Conversely, however, the evidence unquestionably also permitted a finding of innocence, or non-culpability. This is so even if the standard of proof is "preponderance," and certainly so if it is "beyond a reasonable doubt."

5/ It is uncertain whether in a non-jury case the Juvenile Court judge, in addition to rendering his general finding on culpability, is also obliged to make special findings of fact and to express the reasoning which connects these findings to his verdict. See Fed. R. Crim. Proc. 23(c); Gen. Sess. R. Crim. Pro. 14(II)(G). What is clear is that if for whatever reason he does so explain his verdict, the features of his explanation cannot escape judicial review. If, for example, the Court had ruled perversely that Newton was guilty because he was a Negro, or irrationally that Newton was guilty because he was 15 years old, the Court's judgment could not be affirmed here, no matter how strong the Government's evidence proving guilt.

for this practice was obvious enough: to avoid resort to the "guilty" terminology characteristic of ordinary criminal procedure yet perhaps out of place in the special juvenile court setting. The dangers, however, were also obvious: that the fact-finder would return a verdict against the juvenile on grounds that he was in some linguistically general sense "involved" in the illicit act, without regard to whether he was in any of the specific statutory senses a principal, an accessory, or an aider or abettor;[6/] and that in any case the exact legal basis of an "involved" verdict -- that is, whether the juvenile was a principal, etc. -- would remain undisclosed. Finally, in In Re Wylie, 231 A.2d 81 (D.C.C.A. 1967), the D.C. Court of Appeals, "[g]uided by the ruling in Gault," supra at 82, ruled that the "involved" verdict was offensive to due process, suggesting that the Juvenile Court adopt perhaps a "yes/no" verdict if "guilty" were still deemed inappropriate. Wylie itself involved a youth charged with three offenses, robbery, attempted robbery, and assault; thus the imprecision of the "involved" verdict as to the exact basis of culpability was compounded by the imprecision as to which of the three offenses the verdict refused. The abuse to principles of the rule of law was thus particularly grave.

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6/ § 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

Unfortunately, a review of the Juvenile Court proceedings below makes it obvious enough that the Juvenile Court's treatment of Newton Ellis managed to realize in the concrete all the dangers potential in the verdict practice correctly condemned in Wylie.[7/]

The evidence at trial, set out fairly fully in the Statement of the Case, supra, was uncontradicted that Newton was physically on the scene when several other boys broke into Irving's Men's Store, Newton testifying he was returning home along 14th Street with friends. Newton admitted that he then ran away, saying he did so in order to avoid being caught in incriminating-appearing circumstances. There was considerable conflict in the evidence as to (1) whether Newton was running in the same street as the other boys or in a separate alley, and (2) whether he was carrying a bathrobe. In his summation, Corporation Counsel argued in part as follows:

> It does not seem to me that he [Newton] is not involved. Perhaps, one cannot expect him to act rationally all the time but he did not seem to do anything to prevent the breaking. He saw the breaking. He did not tell them to stop or anything. (Stress added).

The Juvenile Court then delivered its findings of fact and conclusions of law, set out in full below:

> All right, Newton, the Court has listened to the

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7/ Apparently, moreover, its treatment of Newton reflects a continuing or at least recurring Juvenile Court practice. See one of the companion cases here, In the Matter of Coward, No. 23,274, in which the Juvenile Court had ruled, in language mirroring its language here, that "when you are with a group of boys who commit an offense, you are just as 'guilty' as they are." See also In the Matter of Hill, 253 A.2d 791 (D.C.C.A. 1969), which raised a similar issue, though the D.C. Court of Appeals did not mention this issue in its opinion.

> evidence that has been adduced in this case. The Court notes that Officer Oliva in this case testified you were with three boys and you were the last boy that happened to catch up in this group of boys. He saw this object, which turned out later to be the bathrobe, fall to the walk.
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> The Court notes you denied having the bathrobe. The Court notes you denied that you knew of or were with the two boys who broke the window at Irving's Men Shop. However, the Court prefers to believe the witnesses for the Government, that of Officer Oliva, which he stated he definitely placed you with two other boys running. The Court feels you being with the boys who did the actual breaking of the window, that you are just as guilty as they are and accordingly, the Court does find that you committed the offense. The Court, therefore, finds you are within the jurisdiction of this Court.

The Court's central legal syllogism, then, was that "You [Newton] being with the boys who did the actual breaking of the window, that you are just as guilty as they are and accordingly, the Court does find that you committed the offense."[8/] This syllogism must be interpreted in light of Corporation Counsel's closing argument and with a mind to the fact that Newton was charged with two distinct crimes. Plainly, the Court's logic embodies a notion of guilt by association, or guilt by "involvement," which the law does not permit.

It goes virtually without saying, first, that being physically "with" the actual perpetrators of an unlawful act does not render the culpable as a principal; this is so whether one is "with" them at the time of the act itself, or "with" them as

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8/ Confirmation that the Court definitely meant what it seemed to say comes from the fact that it expressed and relied on an almost exactly identical logic in the Coward case. See fn. 7, supra.

they run away. In short, to be guilty of committing the crime, one must indeed have committed the crime. Running away from the scene of the crime may be some evidence of culpability, but it is certainly not conclusive as a matter of law, see Hunt v. United States, 115 U.S. App. D.C. 1, 316 F. 2d 652 (1963), and Green v. United States, 104 U.S. App. D.C. 23, 259 F.2d 180 (1958), cert. denied, 359 U.S. 917 (1959), especially when the accused offers at trial a perfectly reasonable and plausible explanation as to why he ran, i.e., to avoid being detected under circumstances which might appear incriminating, if falsely so.[9/]

Nor does being "with" the agents of crime standing alone render one culpable as an aider or abettor.[10/] Plainly, courts must confer a disciplined definition on aiding and abetting,

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9/ The Court mentions in its statement the conflicting testimony as to whether Newton was carrying a bathrobe. But, while the Court clearly sided with Det. Oliva on the question of Irving Street vs. the alley, it can best be read as having left the bathrobe question unresolved; apart from believing Newton on this issue, the Court may well have found some merit in counsel's suggestion that, given night-time conditions, the bathrobe found near Newton could have been dropped by one of the other boys, yet not have come into Det. Oliva's view until Newton, running last, had passed it by (Tr. 8). In any event, the Court plainly did not rely on any bathrobe finding in determing culpability, as its "[t]he Court feels . . . " sentence verifies.

10/ When the verdict of a trier of fact in a criminal case fails to specify which of the several crimes charged the accused has committed, and moreover leaves ambiguous the nature of his culpability (as principal, etc.), the job of assessing the evidence supporting the verdict on appeal gets extremely complicated, as this case shows. This all provides one more reason for ruling that such verdicts are legally inadequate. See People v. Sykes, 22 N.Y. 2d 159, 164, 292 N.Y.S. 2d 76, 81, 239 N.E. 2d 182, 185 (1968).

lest it become, like conspiracy,[11/] an "elastic, sprawling, and pervasive offense." See Krulewitch v. United States, 336 U.S. 440, 445 (1949) (Jackson, J., concurring). And the case law makes thoroughly clear what any student of law would assume, that being "with" criminals does not necessarily mean one is the aider or abettor; to rise to that status, the proof must show, and the fact-finder must find, (1) that the accused knows of and shares the criminal purpose; and (2) that he deliberately and affirmatively participate in or contribute to the criminal project. See, e.g., Nye & Nissen v. United States, 336 U.S. 613, 618-19 (1949) (construing what is now 18 U.S.C. §2); Diaz-Rosendo v. United States, 364 F.2d 941, 944 (9th Cir. 1966); Johnson v. United States, 195 F.2d 673 (8th Cir. 1952); Egan v. United States, 52 App. D.C. 384, 287 Fed. 988 (1923); Davis v. United States, 124 U.S. App. D.C. 134, 362 F.2d 964 (1966) (Burger, J., dissenting). It follows of necessity that mere presence at the scene of the crime is hardly enough. See, e.g., United States v. Milby, 400 F.2d 702, 706 (6th Cir. 1969).

The Juvenile Court's definition of culpability in terms of being "with" the actual culprits, is, then, unacceptably loose. This unacceptability is aggravated by the fact that the Court failed to specify whether it was housebreaking or petit larceny, or both, which it was finding Newton guilty of: " . . . the

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11/ Since "conspiracy" was not charged in the original petition against Newton, it would have been improper for the Juvenile Court to find him culpable on such a theory. See Gault, supra, establishing the juvenile's due process right to notice. Accordingly, appellant will not discuss in any detail whether being "with" the actual culprits legally amounts to conspiring with them, although plainly it does not.

Court does find that you committed the offense.[12/] Such a verdict in a multi-count case is improper in adult criminal court. See, e.g., United States v. Schmidt, 376 F.2d 751 (4th Cir. 1967), cert. denied, 389 U.S. 884 (1967); United States v. Crescent-Kelvan Co., 164 F.2d 582, 589 (3d Cir.1948); Soper v. United States, 27 F.2d 648, 649 (9th Cir. 1928); People v. Huffman, 315 Mich. 134, 23 N.W. 2d 236 (1946); State v. Meadows, 331 Mo. 553, 55 S.W. 2d 959 (1932). It is equally improper in Juvenile Court. See People v. Sykes, 22 N.Y. 2d 159, 292 N.Y.S. 2d 76, 239 N.E. 2d 182 (1968); In Re Wylie, supra. Here, it combines with the court's "with" reasoning in a particularly unfortunate way, making it all too clear that the Court found Newton culpable simply on grounds that he was in some loose sense associated with some generalized criminal episode.

The Juvenile Court is in a full sense a court of law. See Gault, supra. In this case it has plainly departed from the discipline which would be expected and required in adult criminal cases. Perhaps such departures can win justification when they are integrally tied to or compelled by one or more of the special needs and purposes of the juvenile court justice. No such showing can be made here. Plainly, nothing in the illegality identified above by appellant in any way advanced, let alone was required by, any of those special purposes. Congress has declared that the Juvenile Court can assume jurisdiction over a youth under

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12/ Counsel earlier assumed that "the offense" referred to the housebreaking charge. This assumption was flatly denied by Corporation Counsel and seriously questioned by the Court of Appeals below.

§ 1551(a)(1)(A) if the latter has "violated a law. . . . " Assumption of jurisdiction without a clear, specific, and lawful finding that the youth in truth "has violated a law" is indeed subversive of the Juvenile Court's own mandate.

## CONCLUSION

For reasons aforestated, appellant requests that this Court reverse the decision of the D.C. Court of Appeals, vacate the Judgment of the Juvenile Court, and order a new trial for Newton Ellis.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed, postage prepaid, to Richard Barton, Assistant Corporation Counsel, District Bldg., 14th and Pennsylvania Avenue, N.W., Washington, D. C., this 12th day of December, 1969.

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